



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF GENERAL  
COUNSEL

**MEMORANDUM**

**SUBJECT:** Impartiality Determination to Participate in Certain Matters Involving the Pennsylvania Office of the Governor.

**FROM:** Jennie Keith  
Deputy Ethics Official  
Office of General Counsel, Ethics Office

**TO:** Jack Groarke  
Senior Advisor for Implementation  
Office of Congressional and Intergovernmental Relations

As the Senior Advisor for Implementation in the Office of Congressional and Intergovernmental Relations (OCIR) of the United States Environmental Protection Agency, you seek permission to participate in a specific party matter involving your former employer, the Commonwealth of Pennsylvania. Within the last year, prior to being selected for this position as a Schedule C appointee, you served as the Deputy Chief of Staff and Implementation Implementation Coordinator with the Pennsylvania Office of the Governor Thomas Westerman Wolf (Office of the Governor).

Under President Biden's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."<sup>1</sup> Therefore the Ethics Pledge does not apply to your Commonwealth of Pennsylvania employment.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Under this rule, you have a "covered relationship" with the Commonwealth of Pennsylvania, specifically with the Office of the Governor. *See* 5 C.F.R. § 2635.502(b)(1)(iv). Absent an impartiality determination from me authorizing your participation, for one year from the date your employment with the Office of the Governor terminated, you cannot participate in any specific party matter in which it is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a). Your cooling off period

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<sup>1</sup> *See* Exec. Order 13989, Section 2(k), which provides that "'former employer' does not include...State or local government."

with the Office of the Governor expires December 18, 2023. After December 18, 2023, this impartiality determination will no longer be necessary.

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that we take into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality, and I am authorizing you to participate as the Senior Advisor for Implementation for OCIR in particular matters that involve the Office of the Governor with the following limitation: you must recuse yourself from participating in specific party matters in which you participated personally and substantially while employed with the Office of the Governor. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since December 2020, you have served as the Deputy Chief of Staff and Implementation Implementation Coordinator for Pennsylvania Governor Thomas Wolf. In this role, you served as the primary policy advisor to Governor Wolf on the Bipartisan Implementation Law implementation across all the Commonwealth of Pennsylvania's agencies. You also developed and implemented Governor Wolf's federal policy agenda and served as the primary liaison to the White House, federal agencies, and Congress. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the Office of the Governor. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you have a defined contribution plan and a deferred compensation plan with the Commonwealth of Pennsylvania. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the Commonwealth's ability or willingness to honor its contractual obligations with respect to your state retirement interests. But pursuant to the regulatory exemptions, this

personal financial interest is not a disqualifying one that raises concerns about participation in particular matters affecting the holdings of the plan or in particular matters of general applicability affecting the sponsor of the plan under the federal conflicts of interest statute. *See* 5 C.F.R. §§ 2640.201(c)(1)(ii), 2640.201(c)(1)(iii), and 2640.201(c)(2). In EPA's experience, it is unlikely you, as the Senior Advisor for Implementation will be in any position to affect the State's ability or willingness to pay these benefits to its retirees.

Nature and importance of the employee's role – As the Senior Advisor for Implementation, you serve as the Agency's principal point of contact with states and local governments on the Inflation Reduction Act and the Bipartisan Implementation Law. In this role, you are expected to communicate freely with states and with their leadership, including Pennsylvania and its governor's office.

Sensitivity of the matter – We anticipate that there may be specific party matters in which you did not participate personally and substantially for the Office of the Governor that will rise to your level of attention, merit your participation, and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as the Senior Advisor for Implementation in such matters will be of importance to the Administrator, and therefore, in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in specific party matters that involve the Commonwealth of Pennsylvania's Office of the Governor, but not on the very same specific party matters on which you worked on personally and substantially while employed by the Office of the Governor. If the Agency determines that it has a compelling reason for you to participate on any of those same specific party matters that you participated in personally and substantially, then you may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you had previously participated while OGC/Ethics considers whether the Agency's interest in your participation outweighs any impartiality concern.

While I have issued you this determination to interact with the Office of the Governor with the limitation described above, you may wish to make adjustments to your duties to not participate in a particular matter that involves the Office of the Governor as a specific party. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with OGC/Ethics should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at [keith.jennie@epa.gov](mailto:keith.jennie@epa.gov) or (202) 564-3412.

cc: Tim Del Monico, Associate Administrator  
John Lucey, Deputy Associate Administrator for Intergovernmental Relations